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10  
11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13  
14 TWIST IT UP, INC., a Delaware  
15 corporation,

16 Plaintiff,

17 v.  
18

19 ANNIE INTERNATIONAL,  
20 INC., a Pennsylvania corporation  
21 and DOES 1- 10,

22 Defendants.  
23  
24  
25  
26

**Case No: 8:24-cv-00736-DMG-ADS**

**DEFENDANT ANNIE INT'L,  
INC.'S MEMORANDUM IN  
SUPPORT OF MOTION TO  
STRIKE CORRECTIONS TO  
PLAINTIFF'S FRCP 30(b)(6)  
DEPOSITION TRANSCRIPT**

**Date:** June 27, 2025

**Time:** 3:00 p.m.

**Place:**

Courtroom 8C, 8th Floor  
350 West 1st Street,  
Los Angeles, CA, 90012

**Hon. Dolly M. Gee**  
**United States District Judge**

Pursuant to Federal Rule of Civil Procedure 56(a), Defendant Annie International Inc. (“Annie”) hereby moves to strike corrections submitted by Plaintiff Twist It Up, Inc. (“Twist”) to its FRCP 30(b)(6) deposition transcript.

## **I. INTRODUCTION**

On February 6, 2026, Annie took the deposition of Twist, which designated Mr. Noel Durity as its corporate representative pursuant to FRCP 30(b)(6). (Declaration of R. Joseph Trojan (“Trojan Decl.”), Ex. 1).

Subsequently on April 17, 2025, Mr. Durity submitted corrections to his transcript pursuant to FRCP 30(e). (Trojan Decl., Ex. 2.) Some of these corrections relate to a critical issue in the case: i.e., whether Mr. Durity committed fraud on the Patent Office when he prosecuted the patents at issue by not disclosing material prior art. Specifically, the asserted patents claim a hair twisting pick comb for styling African-American hair, which is essentially a miniaturized tennis racket. In the deposition, Mr. Durity (the named inventor of the patents) testified that using tennis rackets to twist hair was “common” in the African-American community. (Trojan Decl., Ex. 1: Durity Depo. at 41:21-24.) This is critically important because the Patent Examiner rejected Mr. Durity’s patent application based upon a tennis racket patent. To overcome the Examiner’s use of a tennis racket patent, Mr. Durity falsely argued that “African Americans are not known to purchase, use, implement tennis rackets . . . as hair styling tools.” (Trojan Decl., Ex. 4: O/A Resp. at pp. 7-8.) Mr. Durity knew that was not true since he used a tennis racket himself as a hair styling tool before he filed for his patent. (Trojan Decl., Ex. 3: ROG 6.) Mr. Durity’s deposition testimony is critical because it goes to the heart of the inequitable conduct issue in the case.

After the deposition, Plaintiff no doubt recognized that Mr. Durity’s testimony would sink its patent case, so Plaintiff tried to make wholesale changes to his testimony. These changes are a clear violation of FRCP 30(e) as the changes on their face seek to expand on and introduce contradictory testimony. Thus, the changes

must be stricken from the record because Rule 30(e) “does not properly include changes offered solely to create a material factual dispute in a tactical attempt to evade an unfavorable summary judgment” *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.*, 397 F.3d 1217, 1225-6 (9th Cir. 2005).

## II. BRIEF STATEMENT OF FACTS

Twist proposed changes to the deposition are summarized as follows:

Original Transcript	Correction	Reason
<p>Q. So have you ever seen someone use a tennis rack --</p> <p>A. Yeah, it's common.</p> <p>Q. So using a tennis --</p> <p>A. It's how I created the comb.</p> <p>Trojan Decl., Ex. 1 at 21:21-24<sup>1</sup></p> <p>A When woven. Have you tried to bend nylon strings of a tennis racket? They don't bend.</p> <p>Q Right. And the idea of the nylon came from the tennis racket; right?</p> <p>A Correct. My entire idea came from me using a tennis racket on my head for four years taking it to Brazil. And this is all -- you can -- this is all -- me taking it to Brazil,</p>	<p>‘Common,’ as used here means that I personally was aware of a few individuals, including myself, who had used a tennis racket to twist their hair prior to 2016, and it was something I had done a few times personally. However, it was not a widely adopted or culturally prevalent practice among African-Americans in general and it was not common for African-Americans to purchase tennis rackets as a hair styling tool.</p>	<p>Clarifying a general statement</p>

<sup>1</sup> Mr. Durity does not actually request the correction of this portion of his deposition and the proposed change is clearly contrary to his own testimony.

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1	and I lost my tennis racket.		
2			
3	Trojan Decl., Ex. 1 at 102:23 – 103:4		
4	Q And the stainless steel is so valuable because it's highly functional in order to be used with African-American hair; right?	The stainless steel grid was selected as a design choice to give the Twist It Up comb a distinctive and premium look. It was not selected for any superior hair twisting function compared to other materials like nylon or plastic	Clarifying a general statement
5	A It has nothing to do with the function. It has to do with the way that it looks.		
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12	Trojan Decl., Ex. 1 at 94:10–11		
13	Q And the stainless steel is so valuable because it's highly functional in order to be used with African-American hair; right?	I chose stainless steel for its distinct visual appearance and premium aesthetic, which aligned with the brand image I wanted for Twist It Up. It was a design choice—not based on ease of manufacturing or functional advantage	Clarifying a general statement
14	A It has nothing to do with the function. It has to do with the way that it looks.		
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20			
21	Trojan Decl., Ex. 1 at 94:8–10 <sup>2</sup>		
22	So as of right now, the only thing that is my trade dress would be the stainless steel comb and that circular shape and that packaging exposes the stainless steel comb, and that would be my	The stainless steel comb and circular frame were chosen to give Twist It Up its unique visual identity. The stainless steel grid is a recognizable visual element of the brand—	Clarifying a general statement
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24			
25			
26			
27			

<sup>2</sup> This citation overlaps with the previous citation.

trade dress as of right  
now, currently, year-to-  
date, yes.

not chosen for any  
functional advantage

Q Okay.

A Because that's all I  
sell and that's all that's – I  
don't sell a nylon comb. I  
don't still a plastic comb.  
However, I have the  
ability to do so because  
my patent says nylon  
strings or similar-situated  
material. But I have yet  
to do so.

Trojan Decl., Ex. 1 at  
108:20–109:4

The parties met and conferred concerning the submitted changes on April 30, 2025, but could not agree on the permissibility of the changes. (Trojan Decl., ¶ 6.)

### III. The Deposition Corrections Exceed the Permissible Scope of Rule 30(e)

Federal Rule of Civil Procedure 30(e) permits a deponent to “review the transcript or recording” and, “if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them.” However, courts have repeatedly held that Rule 30(e) is not a license for a deponent to materially alter sworn testimony in an effort to evade adverse consequences or manufacture a factual dispute. The Ninth Circuit has been explicit: “Rule 30(e) is to be used for corrective, and not contradictory, changes” *Hambleton Bros. Lumber Co.*, 397 F.3d at 1226.

The corrections in this case are impermissible “contradictory” changes as described in *Hambleton Bros.* The changes do not clarify minor inaccuracies or transcription errors, but rather substantially revise and contradict the original

1 testimony. For example, Mr. Durity originally testified that using tennis rackets to  
2 twist hair was “common”:

3 Q. So have you ever seen someone use a tennis rack --

4 A. Yeah, it's common.

5 Q. So using a tennis --

6 A. It's how I created the comb.

7 (Trojan Decl., Ex. 1 at 21:21-24.) Yet, Plaintiff now attempts to recast Mr. Durity’s  
8 testimony about the common use of tennis rackets in the African-American  
9 community by claiming that Mr. Durity only had limited cultural awareness of such  
10 practices among African-Americans:

11  
12 ‘Common,’ as used here means that I personally was aware of a  
13 few individuals, including myself, who had used a tennis racket  
14 to twist their hair prior to 2016, and it was something I had done  
15 a few times personally. However, it was not a widely adopted or  
16 culturally prevalent practice among African-Americans in  
general and it was not common for African-Americans to  
purchase tennis rackets as a hair styling tool.

17  
18 This flips Mr. Durity’s original testimony on its head by completely changing the  
19 meaning of the word “common” as used by Mr. Durity in the deposition. In fact,  
20 Mr. Durity appears to cite the incorrect portion of his transcript (Trojan Decl., Ex. 1  
21 at 102:23 – 103:4) to minimize the blatant contradiction. (Trojan Decl., Ex. 2.)

22 Further, Mr. Durity’s later “corrections” are also attempts to revise his prior  
23 admissions that the metal strings of Twist’s product was previously a functional  
24 element. For example, Mr. Durity testified:

25  
26 Q. Well, in this particular claim element, which is the portion that  
27 defines the grid, what you're calling the grid earlier, is there anything in  
28 that portion of the claim that requires that the grid be woven?

1 A. Movable.

2 Q. **Movable. So these strings that are made out of metal, these**  
3 **are movable?**

4 A. **When you put it in your hair, yes.**

5 Q. And what -- because they flex?

6 A. **Yes. Not only flex, but they don't bend under pressure. And**  
7 **the -- this part, when I initially designed it, if you look at my comb,**  
8 **it was actually made out of nylon sheets.** So it was able to move and  
9 expand. So when you have short hair, you were able to twist your hair;  
10 and when you have long hair, the strings would move and you would  
11 be able to expand and twist longer hair. My initial invention was with  
12 nylon strings.

13 (Trojan Decl., Ex. 1 at 41:5-20 (emphasis added).)

14 In attempt to contradict the testimony above, Mr. Durity's "corrections"  
15 contradict the testimony above:

- 16 1. The stainless steel grid was selected as a design choice to give the Twist It Up  
17 comb a distinctive and premium look. It was not selected for any superior hair  
18 twisting function compared to other materials like nylon or plastic.  
19 (Correcting Trojan Decl., Ex. 1 at 94:10–11.)
- 20 2. I chose stainless steel for its distinct visual appearance and premium aesthetic,  
21 which aligned with the brand image I wanted for Twist It Up. It was a design  
22 choice—not based on ease of manufacturing or functional advantage.  
23 (Correcting Trojan Decl., Ex. 1 at 94:8–10.)
- 24 3. The stainless steel comb and circular frame were chosen to give Twist It Up  
25 its unique visual identity. The stainless steel grid is a recognizable visual  
26 element of the brand—not chosen for any functional advantage. (Correcting  
27 Trojan Decl., Ex. 1 at 108:20–109:4.)  
28

1 These changes are not clarifications to his testimony because they are clearly  
2 designed as a substantive recharacterization of the metal strings as a “distinctive”  
3 feature to negate his prior admission regarding the functionality of the metal strings.  
4 The original testimony is critical to the trade dress claims because functional  
5 elements of a product are not protectable as trade dress. See *Fuddruckers, Inc. v.*  
6 *Doc's B.R. Others, Inc.*, 826 F.2d 837, 842 (9th Cir.1987); *First Brands Corp. v. Fred*  
7 *Meyer, Inc.*, 809 F.2d 1378, 1381 (9th Cir.1987)). Thus, Mr. Durity is directly  
8 undermining prior factual admissions and attempting to recast his testimony to  
9 strengthen the alleged distinctiveness of Twist’s trade dress.

10 As the Ninth Circuit emphasized in *Hambleton Bros.*, such “purposeful  
11 rewrites tailored to manufacture an issue of material fact” undermine the integrity of  
12 the deposition process and constitute an abuse of Rule 30(e). Courts may—and  
13 should—strike corrections that serve only to contradict earlier sworn testimony  
14 without plausible claims of transcription error or legitimate clarification.

15 Accordingly, the Court should strike the proposed deposition corrections in  
16 their entirety under the clear guidance of *Hambleton Bros.*, which held that Rule  
17 30(e) “does not properly include changes offered solely to create a material factual  
18 dispute in a tactical attempt to evade an unfavorable summary judgment” (*Id.* at  
19 1225–26)

#### 20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court should GRANT the motion to strike.

22  
23 Respectfully submitted,

24 By:

25 Dated: May 23, 2025

26 /s/R. Joseph Trojan  
27 R. Joseph Trojan  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2025, I filed the foregoing with the Court's CM/ECF system, which will cause it to be served electronically upon all counsel of record.

/s/R. Joseph Trojan  
R. Joseph Trojan

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